

ESTTA Tracking number: **ESTTA705825**

Filing date: **10/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 91217235  |
| Party                  | Plaintiff<br>Financial Industry Regulatory Authority, Inc.  |
| Correspondence Address | VICTORIA J B DOYLE<br>FRIED FRANK HARRIS SHRIVER & JACOBSON LLP<br>ONE NEW YORK PLAZA<br>NEW YORK, NY 10004-1980<br>UNITED STATES<br>teas@friedfrank.com, victoria.doyle@friedfrank.com |
| Submission             | Other Motions/Papers  |
| Filer's Name           | Victoria J. B. Doyle  |
| Filer's e-mail         | doylevi@friedfrank.com  |
| Signature              | /vjbd/  |
| Date                   | 10/30/2015  |
| Attachments            | OPP MOT to DISMISS.pdf(168352 bytes )<br>DECL VJBD.pdf(147688 bytes )   |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Financial Industry Regulatory Authority, Inc., | : |
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| Opposer,                                       | : |
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| Voice Proctor, Inc.,                           | : |
|  | : |
| Applicant.                                     | : |
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Opposition No. 91217235

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS**

Based on the Declaration of Victoria J. B. Doyle, submitted herewith, Opposer Financial Industry Regulatory Authority, Inc., by its attorneys, opposes Applicant's pending Motion to Dismiss.

Respectfully submitted,

Dated: October 30, 2015

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

By:     /Victoria J. B. Doyle/      
Victoria J. B. Doyle

One New York Plaza  
New York, New York 10004  
(212) 859-8000

Attorneys for Opposer  
Financial Industry Regulatory Authority, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY pursuant to 28 U.S.C. § 1746 that on this 30th day of October, I caused a true copy of the attached Opposer's Opposition to Applicant's Motion to Dismiss to be served by Electronic Mail (with consent) upon:

Matthew L. Bycer and Jeremy Rovinsky, Esq.

[matt@nationalparalegal.edu](mailto:matt@nationalparalegal.edu)

[jeremy@nationalparalegal.edu](mailto:jeremy@nationalparalegal.edu)

National Paralegal College  
717 E. Maryland Ave., Suite 115  
Phoenix, AZ 85014

\_\_\_\_\_  
/Victoria J. B. Doyle/

Victoria J. B. Doyle

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Financial Industry Regulatory Authority, Inc., | : |                         |
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| Opposer,                                       | : |                         |
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| - v -  | : | Opposition No. 91217235 |
|  | : |                         |
| Voice Proctor, Inc.,                           | : |                         |
|  | : |                         |
| Applicant.                                     | : |                         |
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**DECLARATION OF VICTORIA J. B. DOYLE**

1. I am a member of the Bar of the State of New York and an associate with the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP, attorneys for Opposer Financial Industry Regulatory Authority, Inc. (“FINRA”) in this proceeding. I make this declaration in support of FINRA’s Motion for a 14-day Suspension and in opposition to Applicant’s Motion to Dismiss.

2. The parties negotiated a written settlement agreement during spring and summer 2014. On August 21, 2014, Applicant indicated via email that it would accept some but not all of Opposer’s revisions to the draft written agreement. Opposer continued in good faith to seek further revisions to the draft agreement by sending Applicant revised drafts at various times after August 21, 2014, including most recently on June 19, 2015.

3. On June 23, 2015, Applicant communicated to Opposer via email that because “we have not made any progress toward settlement in the past many months...[w]e are not in a position to re-open negotiations now.” In this regard, Applicant indicated that it wanted to wait until the Board decided Opposer’s first motion to extend the trial dates and Applicant’s first motion to dismiss before further discussing settlement.

4. The Board granted Opposer's motion to extend trial dates and denied Applicant's first motion to dismiss on September 18, 2015. That same day, Opposer emailed Applicant seeking to finalize the settlement agreement. Applicant did not respond.

5. In early October, Opposer requested a conference call with Applicant to discuss settlement. On October 9, Applicant informed Opposer asked via email "Instead of scheduling a phone conference for tomorrow, can you please inform us whether FINRA will accept the agreement without your modifications to Section 2.1?" In response, Opposer asked Applicant to send the undersigned "the draft you consider your final offer? I want to be very sure we are referring to the same draft before I go back to FINRA." This was because FINRA had reviewed and modified several drafts over the course of settlement discussions.

6. Applicant sent the final-offer draft settlement agreement to Opposer on October 9<sup>th</sup>, and Opposer's counsel forwarded it to FINRA for review.

7. On October 12<sup>th</sup>, Applicant "confirmed" via email that "[t]his offer of ours remains open," referring to the final-offer version of the written settlement agreement. Because FINRA is a large non-profit, it needed more than three days – when Opposer's testimony period was closing - to review and sign off on the written settlement agreement. In view thereof, Opposer requested Applicant's consent to a suspension of the trial dates pending FINRA's final review of the agreement. Applicant refused to grant its consent; hence Opposer filed a motion to suspend the proceeding for 14 days.

8. *The next day*, on October 16<sup>th</sup>, Opposer sent to Applicant the executed settlement agreement. *After* receiving the signed agreement, Applicant filed its second motion to dismiss.

I, Victoria J. B. Doyle, hereby declare under penalty of perjury that the foregoing is true  
and correct to the best of my knowledge and belief.

Dated: New York, New York  
October 30, 2015

\_\_\_\_\_/Victoria J. B. Doyle/  
Victoria J. B. Doyle

## **CERTIFICATE OF SERVICE**

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that on this 30th day of October, 2015, I caused to be served on the following, by email with Applicant's consent, a true copy of the foregoing DECLARATION OF VICTORIA J. B. DOYLE :

Matthew L. Bycer and Jeremy Rovinsky, Esq.

[matt@nationalparalegal.edu](mailto:matt@nationalparalegal.edu)

[jeremy@nationalparalegal.edu](mailto:jeremy@nationalparalegal.edu)

National Paralegal College  
717 E. Maryland Ave., Suite 115  
Phoenix, AZ 85014

Dated: New York, New York  
October 30, 2015

/Victoria J. B. Doyle/  
Victoria J. B. Doyle